



STATE OF NEW JERSEY

In the Matter of Jamal Orikat,
Correctional Police Officer (S9999U),
Department of Corrections

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

CSC Docket No. 2021-690

List Removal Appeal

ISSUED: MARCH 26, 2021 (SLK)

Jamal Orikat, represented by David J. Altieri, Esq., appeals the decision to remove his name from the Correctional Police Officer (S9999U), Department of Corrections eligible list on the basis of an unsatisfactory background report and falsification.

By way of background, the appellant was initially removed from the subject list for an unsatisfactory criminal background. Specifically, the appointing authority indicated that the appellant was charged with 3rd degree Escape and Possession/Consumption of Alcohol Underage offenses for a 2010 incident, which were disposed of through a successful diversionary program. However, in *In the Matter of Jamal Orikat* (CSC, decided October 23, 2019), the Civil Service Commission (Commission) restored the appellant’s name to the list.

In this matter, the appointing authority removed the appellant from the subject list based on an unsatisfactory background report and falsification of the employment application. Specifically, in addition to the above-referenced incident, the appointing authority indicated that on July 15, 2012, the appellant was charged with Possession and Consumption of Alcoholic Beverage by Minors, a disorderly person offense, where he was found guilty and ordered to pay a fine. Additionally, on July 28, 2012, the appellant was listed as an individual involved in an incident where he was identified in the assault of a male complainant; however, although a police report had been completed, no charges were ever filed. Further, on May 4, 2014, the

appellant was listed as an individual involved in an altercation with another individual where a police report was completed, but no charges were filed. Also, on July 2014, the appellant was charged with a municipal offense for failure to abide by posted signs (entering posted or restricted area – State Park) and was ordered to pay a fine. Moreover, on January 7, 2018, the appellant was charged with Simple Assault, a disorderly persons offense, where although the charge was dismissed, the appellant paid restitution.

Additionally, through the appellant's saved iCloud account conversations from 2011 to 2019, the appointing authority discovered that he references assaulting individuals and drinking while underage during which a deferment for prosecution was being completed for an alcohol-related offense. Specifically, it discovered the following message from September 11, 2011:

(Appellant's Associate): "My n****a John lol we should have peed on the dumb b**** lmaoo you punched her neck!!"

(Appellant's Response): "Lmfaooooo, yo I was throwing jabs at her when she was passed out, I told you we should have just left her somewhere she aint no who we was, and lmfaoo you that's mad funny"

Further, the appointing authority indicated that the appellant failed to disclose on his application that he worked for Quick Chek Corporation in 2011, Elan Caterers LLC in 2012, G&B, LLC in 2013, and Marshalls of MA, Inc. in 2014.

On appeal, the appellant presents that this is the second time that the appointing authority is removing his name from the list. He asserts that the appointing authority is making the same erroneous argument as the initial matter where his name was restored to the list.

In response, the appointing authority agrees that the appellant cannot be removed for the same reason indicated in the prior decision, namely an unsatisfactory criminal background. However, it asserts that it is now removing the appellant's name from the list for new reasons. The appointing authority presents that the prior decision indicated that the appellant's name was restored to the subject list for prospective employment opportunities only. It notes that it is the responsibility of the appointing authority to properly investigate potential candidates for hire. The appointing authority states that the Commission indicated in the prior decision that the appellant's removal was for a minor and isolated incident while he was a juvenile and sufficient time passed to demonstrate rehabilitation. However, during its subsequent restoration investigation, the appointing authority determined that the appellant had not demonstrated rehabilitation from his juvenile offense nor was that incident for the original removal isolated. It also presents that the appellant failed to disclose four prior employers that he worked for since 2011 and he has

demonstrated a pattern of conduct that is not conducive to employment in the subject title.

In reply, the appellant states that the appointing authority acknowledges that the prior Commission decision cannot be revisited. Rather, it contends that the appellant's failure to include all prior employment is an inadequate basis for the removal because it constitutes "falsification of [his] application." However, the appellant argues that an oversight of that nature, under any reasonable view of the circumstances, does not fit the definition of "falsification," and to characterize his action as "falsification" is disingenuous and inaccurate. The appellant notes that this is the second time that he completed an employment application for the appointing authority. He indicates that his initial application included most, if not all, of the additional employment information that the appointing authority contends that he is now lacking. The appellant highlights that one of the jobs was for a catering company where he worked for less than a month. Further, he indicates that one of the jobs was at a QuickChek franchise that is no longer in business, and thus, no information is available. Moreover, the appellant contends that he was so far removed from the other two jobs in question that he cannot completely remember what they were, but he believes that it may be another catering job and a job at Marshall's. Nevertheless, he states that he already provided the appointing authority with this information. The appellant wonders if the appointing authority's continued efforts to disqualify him relate to its displeasure with the Commission's prior decision; however, he notes that it must comply with the Commission's decision even if it is dissatisfied.

CONCLUSION

N.J.A.C. 4A:4-4.7(a)1, in conjunction with *N.J.A.C.* 4A:4-6.1(a)9, allows the Commission to remove an eligible's name from an eligible list for other sufficient reasons. Removal for other sufficient reasons includes, but is not limited to, a consideration that based on a candidate's background and recognizing the nature of the position at issue, a person should not be eligible for appointment.

N.J.A.C. 4A:4-4.7(a)1, in conjunction with *N.J.A.C.* 4A:4-6.1(a)6, allows the Commission to remove an eligible's name from an employment list when he or she has made a false statement of any material fact or attempted any deception or fraud in any part of the selection or appointment process.

N.J.A.C. 4A:4-6.3(b), in conjunction with *N.J.A.C.* 4A:4-4.7(d), provides that the appellant has the burden of proof to show by a preponderance of the evidence that an appointing authority's decision to remove his or her name from an eligible list was in error.

Initially, it is noted that in the Commission's prior decision, it restored the appellant's name to the list because the record before it at that time indicated that the appellant was involved in a minor and isolated incident while he was a juvenile and there was sufficient time for him to have demonstrated rehabilitation as the incident in question was six years prior to the subject examination's August 31, 2016 closing date. However, the Commission recognizes that a Correctional Police Officer is a law enforcement employee who must help keep order in the prisons and promote adherence to the law. Correctional Police Officers, like municipal Police Officers, hold highly visible and sensitive positions within the community and the standard for an applicant includes good character and an image of utmost confidence and trust. *See Moorestown v. Armstrong*, 89 N.J. Super. 560 (App. Div. 1965), *cert. denied*, 47 N.J. 80 (1966). *See also In re Phillips*, 117 N.J. 567 (1990). The public expects Correctional Police Officers to present a personal background that exhibits respect for the law and rules. As such, when the Commission is presented new information that a Correctional Police Officer candidate does not have the background to meet the high standards to be a law enforcement officer, it has the obligation, and even the ability *sua sponte*, to remove that candidate from the list, even if it previously restored that candidate to the list. Further, it is noted that the Commission's prior restoration was for prospective employment opportunities only and the appellant did not have any vested right in appointment. Moreover, it is within an appointing authority's discretion, upon an individual's restoration to a list, to undertake a renewed background check, or undertake any appropriate preemployment processing.

In this matter, the record now before the Commission is very different from the initial proceeding. The appellant's background, as now presented by the appointing authority, indicates that the appellant has been continuously involved in negative interactions with the law from 2010 forward including an incident in January 2018, which is after the August 31, 2016 closing date. Additionally, the appellant made a very disturbing comment on his iCloud account in 2011. Moreover, on appeal, the appellant does not even address the new incidents that have been presented regarding his background. Instead, he only responds to the falsification allegation concerning his omission of certain past employments. As such, the record indicates that the appellant does not currently meet the high standards to be a law enforcement officer. Accordingly, the Commission need not address whether the appellant falsified his application concerning his employment omissions on his second application with the same appointing authority for the subject examination as the Commission finds that the totality of his background indicates his name should be removed from the subject list for an unsatisfactory background report.

ORDER

Therefore, it is ordered that this appeal be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 24TH DAY OF MARCH, 2021

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